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No. 638

In the

Supreme Court of the United States

OCTOBER TERM, 1960

DALLAS GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 745

v.

NATIONAL LABOR RELATIONS BOARD

PETITION FOR A WRIT OF CERTIORARI to the UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Dallas General Drivers, Warehousemen and Helpers, Local Union No. 745, herein called the Union, prays that a writ of certiorari issue to review the Opinion and Decree of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case on October 13, 1960,[1] and November 14, 1960, respectively.

[1]The original Opinion of the Circuit Court was rendered August 18, 1960, but no decree implementing the Opinion was then entered because NLRB sought rehearing. The Opinion on rehearing (which substantially changed the reach of the Order) was rendered October 13, 1960. The Decree itself was entered November 14, 1960.

OPINIONS BELOW

The Opinion of the Court of Appeals is not yet reported (App. A).[2] The Opinion on rehearing is not yet reported (App. B). The Decision and Order of the National Labor Relations Board is reported at 124 NLRB 696 (App. D).

JURISDICTION

The Decree of the Court of Appeals was entered on November 14, 1960 (App. C). The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

In the course of a labor dispute the union picketed the employer at his headquarters where some of the non-striking employees reported for work, and also at several construction projects, several miles distant, where the employer was engaged as a subcontractor and employed various craftsmen. As a consequence of the picketing at the construction sites some employees of other sub-contractors on these projects ceased work while other employees did not. The questions presented are:

1.

Whether the Court of Appeals and the NLRB may properly infer from the above stated facts or from the mere fact of picketing at a situs where the primary employer is doing business, but removed from the permanent headquarters place of business of the primary employer, that

[2] "App." refers to Appendices attached to this petition.

the picketing is for the unlawful object of inducing secondary action of employees of secondary employers within the proscription of Section 8(b)(4)(A) of the Labor Management Relations Act of 1947, as amended.

2.

Whether picketing at building construction sites which are jointly occupied by a primary employer and others, found by the NLRB general counsel to be lawful primary activity and accordingly protected by Sections 7 and 13 of the Act and by the First Amendment, and properly directed at the primary employer, may be transformed into unlawful secondary activity proscribed by Section 8(b)(4)(A) of the Act through the action of the primary employer in changing the place of reporting of the non-striking employees.

3.

Whether the NLRB may order cessation of picketing of a primary employer at building construction sites jointly occupied by the primary and secondary employers on the ground that the primary employer had a permanent place of business where the union could and did picket and publicize its dispute to, and solicit the support of, the primary employer's non-striking employees; in other words, whether picketing at one place may be abridged on the plea that it may be exercised at another place.

STATUTE INVOLVED

Section 8(b)(4)(A) and (B) of the National Labor Relations Act, as amended in 1947 (61 Stat. 136, 29 U. S. C., Secs. 151, *et seq.*), makes it "an unfair labor practice for a labor organization or its agents:

> to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring * * * any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9. * * *"

Section 8(b)(4)(A) and (B) has not been amended in any respect material to the questions presented in this petition by Section 704(a), Title VII, Labor-Management Reporting and Disclosure Act of 1959 (P. L. 86-257, 86th Cong., 1st Sess., 73 Stat. 519).

STATEMENT

1. The Stipulated Facts

A. The Original Picketing

The union is the certified representative of the drivers and warehousemen of Macatee, the primary employer involved in the dispute (Tr. 35, 73). In May, 1958, these

"Tr." refers to the printed transcript in the Court of Appeals.

employees struck in support of wage demands which Macatee refused to grant. They engaged in lawful peaceful picketing of Macatee's plant, offices and warehouse, herein called Macatee's headquarters (Tr. 38, ¶7).

In addition to the 35 employees in the driver-warehouse unit, Macatee employs 81 workmen in its construction division (Tr. 36, ¶4). They work at various job sites throughout Dallas County (Tr. 49, ¶14).

At the inception of the strike picketing was limited to the Macatee headquarters (Tr. 38, ¶7, cf. Tr. 49, ¶14). Writing all construction contractors who were members of the Dallas County Construction Employers Association, the union gave the facts of the dispute as the union saw them and expressed the hope that the construction contractors would cease doing business with Macatee "until this labor dispute is settled." (Letter of May 22, 1958, Tr. 46-48.)

By two letters to construction contractors, the union advised that if Macatee should attempt to do work at building sites, the union intended to picket Macatee at such sites. By these letters the union requested the general contractors to grant access to the building site so that the picketing could be "as close to the actual and regular operations of these Macatee employees as possible" (Tr. 46 ff. at 47). The letter continued (Tr. 47-48):

> "Our picket signs will indicate that the dispute is with Macatee, Inc., only, and we will not seek to induce or encourage a concerted refusal by any other employees to perform work or handle goods. Therefore, if strikebreakers come on your job, we hereby

ask permission for our pickets to come within the premises controlled by you and picket directly adjacent to the place where and when Macatee employees are working. Should we not receive such permission within the next three days we shall assume you have refused this request. In that event we may picket the entrances of your job when Macatee employees are working within the job premises. Our only purpose, however, will be the same as stated above. Such picketing will not be directed to your company and to your employees, nor to sub-contractors, and their employees."

No picketing at building sites occurred from the inception of the strike in May, until late in July, 1958. Even at that time, it was preceded by a second letter to the construction contractors (Tr. 44-49):

"Gentlemen:

"Your attention is directed to our letter to you dated May 22, 1958, regarding the Labor dispute between this union and Macatee, Inc.

"In that letter we advised that should a strike breaker, or any other Macatee employee, perform work on any of your jobs or at your premises, we may want to picket it at such primary sites where Macatee employees are working. Such picketing would, of course, be directed to Macatee only. Therefore, we asked you to permit our pickets to come within the premises controlled by you and picket directly adjacent to the place where and when Macatee employees are working. We did not receive such permission; however, we hereby renew that request.

"Unless advised promptly to the contrary, we shall accept your failure to reply as your continued refusal to grant this permission.

"In the event we decide to picket Macatee where its employees are working on any of your jobs, such picketing will be directed against Macatee employees only and not against anyone else.

> "You may use this letter to advise your own employees or employees of other contractors except Macatee employees, that we do not seek to induce or encourage them to refuse to perform any work or to handle Macatee or other materials."

Picketing of Macatee began at construction sites in July, 1958, with signs limited to Macatee. The picketing occurred only at times when Macatee employees were working at such sites. This picketing, which had the incidental effect of causing some employees of other sub-contractors to refuse to work, was challenged by the present charging party's filing a charge with the National Labor Relations Board in Case No. 16-CC-86, alleging a violation of 8(b)(4) (See Bd. App., p. 20, ¶18). After full investigation by the Board's General Counsel, the charge was dismissed on August 15, 1958 (*ibid*, ¶19). An appeal was taken (*ibid*, ¶20 and Exhibit 5), and, thereafter, on December 31, 1958, the General Counsel affirmed the dismissal (*ibid*, ¶20). (Cf. findings, Tr. 51.) Note that the dismissal of the charge was affirmed on the ground that the picketing "was primary rather than secondary activity." The NLRB, in its brief to the Court of Appeals, acknowledged "that the picketing at the construction sites was directed solely at [Macatee's] construction employees." (NLRB Brief to the Court of Appeals, p. 5.)

B. *Employer attempts to change the facts.*

Meanwhile Macatee, after the dismissal of the charge, but while the appeal was still pending, sought to alter the facts. On August 12, 1958, verbal instructions were given Macatee supervisors to begin informing construction em-

ployees to report to work at a vacant lot across the street from Macatee premises. A written notice distributed August 21, 1958, confirmed "the verbal order heretofore issued August 12 to the roofers, and effective August 18 to all personnel" that thereafter employees were to report daily to the office of the company at 4703 Bengal Street for job assignment and details (Tr. 39, ¶10). The second paragraph of the notice changed the reporting place to the "lot directly in front of the office" (Tr. 40).

Thereafter, Macatee employees have *usually* reported to the vacant lot daily * * *" (Tr. 40). However, substantial numbers of Macatee employees could not be reached by pickets at Macatee headquarters—for these employees reported directly to the job sites (See the trial examiner's findings, Tr. 72-78). It is undisputed that according to the picket's observations there were at least 10 to 15 employees reporting directly to job sites each day (Bd. App., p. 7).

Having failed in its earlier attempt to rid itself of the pickets, Macatee, beginning in January, 1959, sought to lay the groundwork for the instant case. Accordingly, it sent the union a letter insisting, erroneously, that pickets at the headquarters could adequately reach all Macatee employees. The Examiner's report reproduces this correspondence (Tr. 52-59, Cf. Bd. Brf., p. 6).

The union insisted that it had a right to continue its picketing which on appeal in Case No. 16-CC-86 had been held by the Board's General Counsel to be "primary rather than secondary activity" (Bd. Brf. to Court of Appeals,

p. 5, ftnt. 2). The union made this clear to the representative of the construction employers (Tr. 56):

> "Macatee does not limit its primary business activity to its plant site on Bengal Street. The legality of the union's full program of picketing Macatee at other locations has been fully determined in N.L.R.B. Case No. 16-CC-86.
>
> "The refusal to issue a complaint therein, and the subsequent refusal to grant the appeal from that decision must be interpreted as a legal decision on which the union may safely rely.
>
> "You are mistaken in referring to secondary job sites for the reason that the union has not engaged in secondary picketing in the past nor does it intend to engage in secondary picketing in the future. All of its picketing has been and will be directed to Macatee and employees of Macatee. Picketing has not and will not be directed to employees of secondary employers."

C. *The picketing in 1959.*

Against the above background the union picketed Macatee at six specified construction sites at which Macatee was working. The details of the picketing are accurately set out in the Examiner's findings (Tr. 60-64). The construction site picketing was conducted by a single picket walking peacefully on the public way and bearing this sign:

> "MACATEE
> BUILDING MATERIALS
> ON STRIKE
>
> We are only picketing Macatee and its employees working on this job site. We are not picketing any other company or employees of any other company.
>
> DALLAS GENERAL DRIVERS, WAREHOUSEMEN & HELPERS OF AMERICA—LOCAL 745"

To doubly insure against misinterpretation of the object of the picketing, the union inserted large advertisements in the daily press and in the weekly organ of the Dallas Central Labor Union, which specified *inter alia*:

> "The picketing is directed at Macatee and its employees only."

The effect of the job site picketing was varied. At some sites the pickets were ignored. At others they caused cessation of work. At still others, some employees ceased, others continued, working. We list in the margin the sites and effects.[4]

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[4]

Job Site	Dates of Picketing	Macatee Employees	Other Employees	Record Citation
Richardson	2/24-2/26/59	left by noon 2/25—other Macatee employees worked 2/26 but did not return thereafter.	most remained at work "some" left before noon 2/24—all by noon 2/25	Tr. 60
John Deere	2/26-2/27/59	2/27 "before the completion of the work day"—Resumed 3/26/59	Some truck drivers refused to cross picket line. Others crossed (Tr. 62). No effect on other construction employees.	Tr. 61-62
Exchange Park	3/3 (2 hrs).	Picketing ceased upon Macatee's leaving the job site.	"Some" ceased work but did not leave the job site.	Tr. 62
Reserve Life	3/6 (1 hr.)	Picketing ceased upon Macatee leaving site	"Some neutrals ceased work"	Tr. 63
DuBoise	3/9 (2 hrs.)	Macatee left so did pickets	Ceased work while pickets were present	Tr. 63
	3/16 (20 min.)	(ditto)	(ditto)	
Great Southwest	3/13 (noon-4:30)	Kept on working	Kept on working	Tr. 63
	3/18 (all day)	Kept on working	Kept on working	Tr. 63

2. The Trial Examiner's Findings

The Trial Examiner's lengthy Intermediate Report (Tr. 34-82) recites stipulated facts and concludes that he is bound by the Board's prior *Otis Massey* decision which he finds "dispositive of the major issue herein" (Tr. 73-78). The Trial Examiner noted that the Court of Appeals had refused to enforce *Otis Massey*, but he, "with all due respect" for the Court of Appeals, held, "I must follow the *Board's* decision in *Otis Massey* unless or until the Board or the United States Supreme Court decides otherwise" (Tr. 77).

3. The Board's Decision

The Board issued a "short-form" Decision (Tr. 114-116) holding the picketing at construction sites unlawful, and based this decision *only* upon the following:[5]

1. That Macatee had a permanent place of business at which union could and did picket.
2. That union had requested employers to cease doing business with Macatee until the labor dispute was settled.
3. Some employees of secondary employers ceased work when pickets appeared.
4. At a single construction site pickets marched past 3 of 4 instead of only 2 of the 4 gates entering the project.

In reaching the conclusion that the job site picketing was for the unlawful purpose of inducing employees of sec-

[5]The Board rejected "the supposed analogy to the *Otis-Massey* case" which the Trial Examiner had found. See the footnote to Board decision (Tr. 116).

ordinary employers to discontinue work with an object of forcing neutral employers, the Board ignored and did not so much as note the stipulated and undisputed facts which indicate valid *primary* activity, viz:

1. The finding of primary activity, and its affirmance by the Board's General Counsel. *Supra*, p. 7 ff.

2. Union letters sent broadside to every contractor in Dallas stating (Tr. 49):

   "* * * You may use this letter to advise your own employees, or employees of other contractors except Macatee employees, that we do not seek to induce or encourage them to refuse to perform any work or to handle Macatee or other materials."

3. Dallas Morning News advertisement by which Union (Tr. 65):

   "* * * hereby advises all interested parties that its dispute is solely with Macatee * * * the picketing is directed at Macatee and its employees only * * *."

4. Similar notice in the labor paper, *The Dallas Craftsman*. (Tr. 67.)

5. The manner of the picketing:

   A. The timing and placing of pickets was only when Macatee occupied and was working on the site.

   B. The legend on the picket sign, viz.:

      "We are picketing Macatee only—not any other persons or firm."

Failing to note any of these stipulated facts, the Board, based on its judgment that the union could adequately communicate its message if picketing was limited to Macatee headquarters, entered an order requiring the union to desist from picketing at the construction sites.

4. The Opinion of the Court of Appeals

The Court of Appeals enforced (*infra*, App. A) "for the reasons already adequately stated in the Board's decision", and on the authority of its own decision in *Superior Derrick Corporation v. N.L.R.B., 273 F. 2d 891 (C. A. 5, 1960).*

The basis implicit in the decisions of the Board and the Fifth Circuit Court in this case, as well as in *Superior Derrick*, and those cases cited therein, is that *it may be inferred from the mere fact of picketing at a situs removed from the permanent place of business of the primary employer that the picketing is for the unlawful object of inducing secondary action.*

REASONS FOR GRANTING THE WRIT

1.

Circuit Courts of Appeals are at wide divergence in determining the standard which should govern in ascertaining whether picketing at a common situs jointly occupied by a primary employer and a neutral employer is primary or secondary.

The view of the court below has been specifically stated by that court to be in conflict with the rationale endorsed by other Courts of Appeals. Compare the Fifth Circuit's decision in *Retail, Wholesale etc. v. Rains, 266 F. 2d 503, 505-506 (C. A. 5, 1959)* affirming a temporary injunction under 10(1) of the Act, with the later decision (by the Court of Appeals for the District of Columbia) in the same case *sub nom, United Wholesale etc. v. N.L.R.B., 282 F. 2d*

824 (C. A. D. C., 1960), refusing to prohibit such picketing. This is but a single instance of many litigants "circuit shopping" between the Fifth and the District of Columbia Courts of Appeals in 8(b) (4) cases. This rush to a forum with advantageous precedent will doubtless continue until the Supreme Court resolves the "difference in approach of this [Fifth Circuit] Court and some other circuits". *Superior Derrick, supra, at 895.*

The rule applied by the Fifth Circuit in the six southern states—and applied in the instant case—is that picketing at places removed from the so-called primary situs becomes secondary by the very act of such picketing. This is the holding of a long line of cases in the Fifth Circuit, viz.: *Superior Derrick v. N.L.R.B., 273 F. 2d 891 (C.A. 5, 1960); N.L.R.B. v. Dallas General Drivers (Associated Wholesale Grocers), 264 F. 2d 642 (C. A. 5, 1959); Retail, Wholesale etc. Union v. Rains, 266 F. 2d 503, 505-506 (C. A. 5, 1959); Local 450 v. Elliott, 256 F. 2d 630 (C. A. 5, 1958); N.L.R.B. v. Truck Drivers & Helpers, etc., 228 F. 2d 791 (C. A. 5, 1956).*[6]

The rule applied in other circuits is one which accommodates the right of the union to picket the primary employer [a right guaranteed by Sections 7 and 8(a)(1) and 13 of the Act] with the right of the neutral employer to be free of picketing [a right guaranteed by Section 8(b)(4) of the Act]. *N.L.R.B. v. Service Trades Chauffeurs, 191 F. 2d 65, 68 (C.A. 2, 1951); N.L.R.B. v. Local 50, Bakery & C. Wkrs.,*

[6]The only case to the contrary in the Fifth Circuit is *N.L.R.B. v. General Drivers (Otis-Massey), 225 F. 2d 205 (C. A. 5, 1955), cert. denied, 350 U. S. 914.* This is a unanimous opinion by Circuit Judge Rives, sitting with two district judges, which has not been followed in the last five years.

etc. (Arnold Bakers), 245 F. 2d 542 (C. A. 2, 1957); N.L.R.B. v. Business Mach. & Office A., etc. (Royal Typewriter), 228 F. 2d 553 (C. A. 2, 1955), cert. denied 351 U. S. 962; Local 618, etc. v. N.L.R.B. (Site Oil), 249 F. 2d 332, 335 (C. A. 8, 1957); Seafarers International Union v. N.L.R.B. (Salt Dome), 265 F. 2d 585, 589 (C.A.D.C., 1959); Sales Drivers Union v. N.L.R.B. (Campbell Coal), 229 F. 2d 514 (C.A.D.C., 1955), certiorari denied, 351 U. S. 972; United Wholesale etc. v. N.L.R.B., 282 F. 2d 824, (C.A. D.C., 1960).

The Supreme Court has never addressed itself to the question of multiple-situs picketing. The Court of Appeals for the District of Columbia, in holding pertinent "the Supreme Court's summary of the proscription of the Act * * *" rendered in another context, quotes at length from this Court's "hot cargo" Opinion. *Local 1976 v. N.L.R.B., 357 U. S. 93, 98.* The District of Columbia Circuit, while noting the "difficulties inherent in varying factual situations presenting recurring problems * * *", and noting further both the rationale of the Supreme Court's *Rice Milling*[1] decision and certain isolated statements made in connection with that picketing, held in accordance with the rationale of the cited Supreme Court cases that "* * * mere picketing at a common situs under the circumstances shown on this record, does not justify an enforcement order", *United Wholesale, etc. v. N.L.R.B., 282 F. 2d 824, 827, 828.* The Fifth Circuit's *Rains, Associated Wholesale Grocers,* and *Superior Derrick* cases, *supra*, and the instant case are to the contrary.

[1] *N.L.R.B. v. International Rice Milling Co., 341 U. S. 665.*

In *Rains*, the Fifth Circuit views as ambiguous the very same Supreme Court opinion which the Court of Appeals for the District of Columbia recognizes as precise and definitive, viz.: To the Court of Appeals for the District of Columbia "it is difficult to see how the basic elements of a section 8(b)(4)(A) unfair labor practice charge could more specifically be spelled out." *United Wholesale, etc., supra, at 827.* But the Fifth Circuit, in *Rains*, insists that the same Supreme Court decision *(Local 1976, supra)* far from being specific and definitive, is a "kind of discursive disquisition * * * in regard to the secondary boycott provision * * * [which] was not determinative as to whether this [Fifth Circuit] court will go with the decisions of the Second Circuit * * * [or with] * * * the decisions of this Court [citing cases which] seem to look the other way." *Retail Wholesale, etc. v. Rains, 266 F. 2d 503, at 506.*

Since the *Rains* decision, the Fifth Circuit has continued to follow its own line of authority, viz.: *Superior Derrick* and the instant case. Meanwhile the Court of Appeals for the District of Columbia remains consistent with the contrary line of authority developed principally in the Second and District of Columbia Circuits. The conflict comes to the point that the identically same stipulated facts are decided one way at an early stage of the proceeding by the Fifth Circuit in *Rains, 266 F. 2d 503 (C. A. 5, 1959)*, and the other way at a later stage in the same proceeding by the Court of Appeals for the District in *United Wholesale, etc. v. N.L.R.B., 282 F. 2d 824 (C.A.D.C., 1960).*

While the Supreme Court has not decided any case involving common situs picketing, it has denied certiorari to

cases holding both ways. Thus common situs picketing held lawful was allowed to continue in *N.L.R.B. v. General Drivers (Otis-Massey), 225 F. 2d 205 (C. A. 5, 1955), cert. den. 350 U. S. 914; Sales Drivers Union v. N.L.R.B. (Campbell Coal), 229 F. 2d 514 (C. A. D. C., 1955), cert. den. 351 U. S. 972.* Cf. *N.L.R.B. v. Business Machine & Office A., etc. (Royal Typewriter), 228 F. 2d 553 (C. A. 2, 1955), cert. den. 351 U. S. 962.* But an injunction against such picketing was allowed to stand in *Seafarers International Union v. N.L.R.B. (Superior Derrick), 273 F. 2d 891 (C. A. 5, 1960), cert den. U. S. ;* Cf. *N.L.R.B. v. Dallas General Drivers (Associated Wholesale Grocers), 264 F. 2d 642 (C. A. 5, 1959), cert. den. U. S.* .*

Questions as to the applicable standards governing whether picketing at a common situs is primary or secondary will continue to plague the Courts of Appeal. Single minded attention to the limitation of Section 8(b)(4), without accommodation of the rights to concerted activity guaranteed by Sections 7, 8(a)(1) and 13, will continue to lead to the error which this Court recently noted in the *Curtis* case *(N.L.R.B. v. Drivers Union, U. S. , 4 L. Ed. 710)*, viz: assumption of the power in the Board to condemn use of a specific economic weapon, i.e. peaceful picketing, without regard to the scheme of the statute and to the fact that "Congress has been rather specific when it has come to outlaw particular economic weapons on the part of unions * * *."

*In *Truck Drivers Union v. N.L.R.B., 249 F. 2d 512 (C. A. D. C., 1957), cert. den. 355 U. S. 958*, the Court reconsidered the matter it had remanded to the Board in *229 F. 2d 514*. The Board, in compliance with the Court's order, looked to several factors other than picketing at a common situs and found a violation of 8(b)(4). The Court affirmed this second Board decision because the Board had relied on factors other than the mere fact of the picketing. In the instant case those distinguishing factors are not present.

2.

The common situs picketing here found unlawful was in the earlier charge held primary and lawful, *supra*, p. 7 ff. The conversion to unlawful secondary picketing was accomplished solely by the employer's changing his instructions as to the place of employees reporting for work. We submit that it is improper to permit the employer to change the employees' picketing from lawful to unlawful action by his own acts. The Court of Appeals for the District of Columbia so held in *Seafarers International Union v. N.L.R.B. (Salt Dome)*, *265 F. 2d 585 (C. A. D. C., 1959)*. But the Fifth Circuit explicitly stated in *Superior Derrick* that "we find ourselves unable to accept the rationale of *Seafarers Intl. Union v. N.L.R.B. (Superior Derrick)* * * *", *273 F. 2d 891, 896.*

If the instant decision is allowed to stand, the right to picket itself (a right guaranteed by Sections 7 and 13 of the Act, and having at least some constitutional protections, cf. *Chauffeurs, etc. v. Newell, 356 U. S. 341)* is left at the discretion of the employer. For the sole purpose of destroying the union's effectiveness, he could remove his "primary" situs to a completely isolated area, require his employees to report to that situs, and then truck them all to the true place of work. The opportunity afforded employers by this theory would apply equally to industrial plant owners as to the construction industry. The union would be effectively deprived of any right to picket whatsoever. For, if the union picketed at the real place of business, where employees of other employers were bound to

appear, there would be a violation of Section 8(b)(4). Surely it is wrong to permit the exercise of the "working man's means of communication"—his basic constitutional means of free speech—to be dependent upon the action of the employer. The Texas Supreme Court has recently recognized that to so "place in the hands of the employer complete control over labor controversies * * * would result in an intolerable situation." *International Union, etc. v. Cox, 219 S. W. 2d 787 at 793 (Tex. Sup. 1949).*

CONCLUSION

For the reasons stated this petition for certiorari should be granted.

Respectfully submitted,

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